United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-1292

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B
P/S

DOCKET NO. 75-1292

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

V.

PIERRIE L. SOLOMON

DEFENDANT-APPELLANT

BRIEF OF DEFENDANT-APPELLANT

PIERRIE L. SOLOMON

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Statement of the Issues

1. Did the Operational Manager of the National Car Rental Office in Bridgeport, Connecticut have standing to consent to a warrantless search of a National truck found in the defendant's possession at the time of the defendant's arrest, thus waiving the defendant's Fourth Amendment rights with respect to that truck.

2. Was the warrantless search of the defendant's brown attache case found in the cab of a National truck which had been in the possession of the defendant at the time of his arrest "reasonable" under the Fourth Amendment?

STATEMENT OF THE CASE

On March 21, 1974, the defendant, Pierrie Leveque Solomon, was arrested in Milford, Connecticut by the Milford Police and charged with possession of stolen property.

On April 5, 1974, the Grand Jury in New Haven returned a two-count indictment (app.6) charging the defendant in Count One with interstate transportation of a stolen motor vehicle in violation of the Dyer Act, Title 18, United States Code, Section 2312, and in Count Two with concealing a stolen motor vehicle which was moving in interstate commerce, knowing that the vehicle had been stolen, thus violating Title 18, United States Code, Section 2312.

On April 15, 1974, the defendant entered a plea of not guilty to both counts, and the Office of the Federal Public Defender for the District of Connecticut was appointed to represent the defendant in all subsequent proceedings relating to this case.

On September 17, 1974, the defendant filed a Motion to Suppress Evidence taken in the course of a warrantless search conducted by the FBI on March 22, 1974. The Government filed its Memorandum in Opposition to the Defendant's Motion to Suppress (app. 7-12) on November 7, 1974, and the defendant filed his Memorandum in Support (app. 13-21)

on November 26, 1974. That same date, the Honorable Jon O. Newman, United States District Court Judge for the District of Connecticut, conducted an evidentiary hearing on the defendant's motion. At the conclusion of the hearing, Judge Newman denied the Motion from the bench, holding that the FBI had obtained a valid consent to conduct the search from an agent of the truck's owner, the National Car Rental Company.

On April 11, 1975, a jury was impanelled, and on April 17, 1975, the trial commenced. During the trial, the Government introduced into evidence at least three different items which were the fruits of the March 22 warrantless search and which were part of the subject matter of the defendant's motion to suppress. Four days later, on April 21, 1975, the trial concluded. On the following day, April 22, 1975, the jury returned a verdict of guilty on both counts.

STATEMENT OF FACTS

The defendant was arrested on March 21, 1974 at the Mayflower Truck Stop in Milford, Connecticut.

At approximately 5:00 p.m. on March 21, 1975, Mr. Joseph Synnett, the Operational Manager for National Car Rental in Bridgeport, Connecticut, was driving past the Mayflower Truck Stop and spotted a tractor-trailer rig parked in the service area. From the markings on the truck's cab, Synnett recognized that the tractor had been rented from his company, the National Car Rental Company. Upon closer inspection, Synnett recognized that the National registration number on the truck's cab belonged to a tractor which had been stolen from the Newark Office of the National Car Rental Company on March 13, 1974.

According to Synnett's testimony, he copied the truck's number, went inside the truck-stop, and called the city manager at National in Newark. After verifying the number as belonging to a stolen vehicle, Synnett returned to the truck, climbed up onto the driver's side, and removed the keys from the ignition. Synnett then re-entered the truck-stop and called the Police Department in Milford.

When he returned to the truck, Synnett obtained the registration papers from the passenger in the truck, and turned them over to Officer Robert Hall of the Milford Police upon Hall's arrival.

Officer Hall checked independently with NCIC to determine whether national computer records indicated that this truck had been reported stolen. Receiving a negative reply from NCIC, Hall then called National in Newark and confirmed that the truck had, in fact, been stolen. Hall then arrested the defendant who admitted that he was the driver of the truck but denied that he knew that the truck was stolen.

The registration papers for the truck corresponded to the license plate which attached to the front of the truck but varied slightly with respect to the Vehicle Identification Number (hereinafter "VIN Number"). The truck's registration papers stated that the truck's VIN Number was TDH 92AV 594 388; the actual VIN Number on the truck driven by the defendant was TDH 92AV 594 383. The truck was then turned over to Synnett who drove the tractor-trailer assembly from the truck stop in Milford to the parking lot outside the National Office in Bridgeport where the entire rig was stored for the night. That lot is surrounded by a steel wire fence with a gate that is customarily locked at the close of business every day.

On the same day as the arrest, the Milford Police Department notified the Federal Bureau of Investigation that a stolen truck with its load had been apprehended in Milford. On the day following the arrest, March 22, 1974, Special Agent Steven Scheiner of the FBI accompanied Sergeant Ambrosio

of the Milford Police to National's office in Bridgeport for the explicit purpose of searching the truck. No search warrant was obtained. After receiving permission from Synnett at National, the law enforcement officers conducted a search of the interior of the cab as well as of the contents of the trailer.

In the course of his search, Special Agent Scheiner discovered a brown attache case in the cab of the truck near the driver's seat. The case was lying lose in the cab; no attempt had been made to hide it. Scheiner did not ask Synnett for consent to open the brown case, but, according to his testimony, opened the "unmarked" case to determine its ownership. Inside, Scheiner found a variety of documents, including toll receipts, gas station receipts, repair bills, bills of lading, a note book and two New York City parking citations.

At the time of the search, the defendant was still in the custody of the Milford police; he was not asked nor did he give his consent to the search. When asked subsequently if the documents in the attache case belonged to him, the defendant said that they did.

I. SUMMARY

The defendant contends that his constitutional rights under the Fourth Amendment were violated by two warrantless searches conducted by the Federal Bureau of Investigation. The evidence seized in the course of those unlawful searches along with the evidence derived from investigations based on information obtained in the course of those searches should have been suppressed.

First, the defendant believes that the warrantless search of a National rental truck by Special Agent Steven Scheiner was unlawful because National had no standing to waive the defendant's Fourth Amendment rights by consenting to the search. In addition, there were no "exigent circumstances" present which justified such a search.

Secondly, the warrantless search of the defendant's brown attache case which was found in the course of the general warrantless search of the National truck was totally without justification. National had no authority to consent to a warrantless search of the defendant's belongings, and the Government had no legitimate interest in conducting such a warrantless search of the defendant's property. This second search was plainly unreasonable under the Fourth Amendment.

The defendant respectfully submits that his Fourth

Amendment right to privacy and his Fourth Amendment right to be secure in his person, papers and effects against unreasonable searches and seizures were violated.

II. THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED UNLAWFULLY IN A WARRANTLESS SEARCH.

Introduction

The primary issue in this trial was whether the defendant knew that the National rental truck he was driving had been stolen. Since the truck had been stolen on March 13, 1974 from the National lot in Newark, New Jersey, and since the defendant had been arrested in possession of that same truck on March 21, 1974 in Milford, Connecticut, the Government was entitled to and received a favorable instruction permitting the jury to infer the defendant's guilty knowledge from his possession of recently stolen property. United States v. Carneglia, 468 F.2d 1084,1088 (2d Cir. 1972); United States v. Fried, 464 F.2d 983, 985 (2d Cir. 1972).

To rebut that presumption, the defendant demonstrated through the testimony of Ernest Richard, a local, free-lance truck driver, that free-lance drivers are often hired to drive rental trucks and often do drive rental trucks without knowing the precise legal status of the trucks, without knowing whether those trucks have been lawfully rented, whether they are overdue, or whether they have been stolen or converted. More importantly, the defendant demonstrated that any driver who compared the truck's registration papers with the truck itself could reasonably have believed that the truck was legitimate. The registration papers contained information which corres-

ponded in virtually every significant detail to the observable information on the truck itself. The only difference between the information on the truck's registration and the truck itself was that the VIN Number which appeared on the registration was TDH 92AV 594 388 while the actual VIN Number on the truck driven by the defendant was TDH 92AV 594 383, a variation in one digit which could easily be overlooked even by the most scrupulous driver or which alternatively could be explained as a typographical error within the National rental agency.

The most significant incriminating evidence bearing on the issue of the defendant's knowledge was evidence taken from the defendant's brown attache case which had been left in the cab of the truck at the time of the defendant's arrest. The Government also introduced "fruit-of-the-poisonous-tree" evidence derived from certain documents found in the attache case.

The evidence taken from the attache case which inculpated the defendant directly consisted of two parking tickets from the City of New York; the first ticket (Government Exhibit 3) was issued on March 15, 1974 for a GMC green tractor with Massachusetts license plate number A 29775; the second ticket (Government Exhibit 4) was issued on March 20, 1974, also for a GMC green tractor with New Jersey license plate number XFN-58R. At the time the truck was stolen, March 13, 1974,

the truck carried the Massachusetts plate number which appeared on the parking ticket found in defendant Solomon's possession on March 21; at the time the truck was recovered in Milford, the truck was carrying the New Jersey plates.

Since both of these tickets were found in the defendant's possession (i.e. in the brown attache case) at the time of his arrest, the Government argued that the truck had been in the possession of the defendant two days after the truck had been stolen, and, further, that the truck had been in the defendant's possession at the time the license plates had been switched. The jury could infer from these facts that the defendant knew that the truck had been stolen.

In addition to the parking tickets, the Government introduced a bill of lading which, like the tickets, had been taken from the brown attache case found in the cab of the truck. That bill of lading had been issued on March 20, 1974 by Vanguard Business Furniture, a company in Brooklyn. An employee of Vanguard testified at the trial that the company records reflected that the defendant picked up a shipment of furniture on March 20, 1974 in a truck with Massachusetts license plate number AP29775. This evidence permitted the Government to argue that on March 20, 1974, the truck had been in the defendant's possession with its original license plates, and that some time after the defendant picked up the load from Vanguard but before the defendant was arrested in Connecticut, the license plates had been switched.

In short, the evidence taken from the defendant's brown attache case and the testimony from Vanguard which was derived from that evidence was highly incriminating. The court's decision denying the defendant's motion to suppress that evidence cannot, therefore be dismissed as "harmless error" under Rule 52(a) of the Federal Rules of Criminal Procedure.

(a) National Car rental had no standing to consent to the warrantless search of a National truck which was in the defendant's possession at the time of the defendant's arrest.

Judge Newman denied the defendant's motion on the ground that the consent supplied to the FBI by Joseph Synnett of National Car Rental was valid and that the resulting search of the truck on March 22, 1974, although warrantless, was similarly valid. The court's decision was presumably based on the following two principles: (1) as the owner of the truck, National Car Rental's rights to possession and control over the truck were equal or superior to those of the driver, Frazier v. Cupp, 394 U.S. 731 (1969); United States v. Gargiso, 456 F.2d 584 (2d Cir. 1972), and (2) becuase the truck had been stolen, the driver's "expectation of privacy" must yield to the superior claims of the lawful owner. Katz v. United States, 389 U.S. 347 (1967).

With respect to the first principle, it is well settled that the validity of a third party's consent to a warrantless

search is not grounded on mere proprietary rights of that third party with respect to the premises or property to be searched. In United States v. Matlock, 42 U.S.L.W. 4254 (February 20, 1974), for example, the Supreme Court upheld a search because it was shown that permission to search was obtained from a third party co-inhabitant who possessed "common authority over or other sufficient relationship to the premises or effect sought to be inspected." 1/ But, the Court noted,

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1/ The leading decisions in the Second Circuit which deal with third party consents to warrantless searches involve fact situations which are entirely different from the facts of this case.

In United States v. Mackiewicz, 401 F.2d 219, 223-224 (2d Cir. 1968), for example, the court upheld a warrantless search where "the circumstances of joint possession and control, the particular relationship of the Mackiewiczes in respect to tax matters, and the nature of the IRS investigation all establish an agency relationship sufficient to make Mr. Mackiewicz competent to waive the wife's privilege..."

In United States v. Cataldo, 433 F.2d 38, 40 (2d Cir. 1970), the court upheld two warrantless "searches" conducted visually when the suspect's roommate invited the agents into their apartment for the purpose of determining whether or not the suspect was there.

In United States v. Gargiso, 456 F.2d 584 (2d Cir. 1972), the court upheld two warrantless searches; the first occurred when the agents obtained the consent of a high company officer to inspect the basement of the company building, access to which was shared by the suspect and other company personnel; the second search occurred when consent was obtained from the owner of a building to search the building's basement when the basement was leased to no one and any tenant was allowed to use it for storage.

In United States v. Ellis, 461 F.2d 962 (2d Cir. 1972), the court upheld a warrantless search of an apartment when the apartment's occupant and her rommate voluntarily

> Common authority is not to be implied from the mere property interest a third party has in the property. The authority which justifies the third party consent does not rest upon the law of property with its attendant historical and legal refinements, but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. (Citations omitted) 42 U.S.L.W. n. 7 at 4254.

The logic of the Supreme Court's opinion in Matlock comports with the Court's prior decisions in Chapman v. United States, 365 U.S. 610 (1960) and Stoner v. California 376 U.S. 483 (1963). In Chapman, the Supreme Court held that Georgia law enforcement officers could not conduct a warrantless search of an individual's rented house in his absence on the basis of permission obtained from the landlord. The fact of ownership , whether the landlord's in Chapman or National Car Rental's in this case, does not, in and of itself, validate third party consent searches.

Similarly, in Stoner, the Court concluded that a hotel clerk could not validly consent to the warrantless search of a customer's rooms. The Court stated, "It is important to bear in mind that it was the petitioner's constitutional right which was at stake here, and not the night clerk's nor the hotel's." See also, Lustig v. United States, 338 U.S.

1/ (Continued) consented to the search, holding "where one's right to occupancy or possession is equal or superior to

(Continued on next page)

74 (1948); United States v. Jeffers, 342 U.S. 48 (1951).

The Fourth Amendment "protects people, not places" Katz v. United States, supra at 351, and a third party's superior claim to ownership must yield to an individual's constitutional right to be secure in his persons, papers and effects. As the Supreme Court said in Warden v. Hayden, 387 U.S. 294 (1967):

> We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property and have increasingly discarded fictional and procedural barriers rested on property concepts. (at 304)

And, in Jones v. United States, 362 U.S. 257, 266-67 ( ), the Supreme Court warned against the dangers of too great a deference to the rights or property-holders when they conflict with individual constitutional rights:

> ... it is unnecessary and ill-advised to import into the law surrounding the constitutional right to be free from unreasonable searches and seizures subtle distinctions developed and refined by the common law in evolving the body of private property which more than almost any other branch of law, has been shaped by distinctions whose validity is largely historical... We ought not to bow to them in the fair administration of the criminal law. To do so would not comport with our justly proud claim of the proecdural protections accorded to those charged with crime.

National's status as lawful owner of the truck does not, therefore, automatically confer standing on National to

(Continued from previous page) another's, his consent to a search is sufficient to make the search lawful."

In none of these cases is the relationship between the non-consenting suspect and the consenting third party the same as that of the defendant free-lance truck driver's relationship to National Car Rental Company.

consent to the search of one of its trucks, particularly when that truck is found in the possession and control of a third individual. It is clear than that whenever National leases a motor vehicle to a private citizen, the constitutional rights of that individual take precedence over National's property rights as the owner. To hold otherwise would be to require every individual lessee who rents an automobile (or a dwelling) to entrust to the lessor the lessee's Fourth Amendment rights to privacy as a pre-condition of the rental.

Assuming then that National could not have supplied the FBI with a valid consent to conduct a warrantless search if the defendant or the defendant's employer had rented the truck from National, what are the legitimate Fourth Amendment claims of an individual arrested while in the possession of a vehicle stolen from National? Because the truck has been stolen at some date in the past, must the driver's expectation of privacy yield to National's property rights?

The defendant respectfully submits that the Fourth Amendment protects the privacy rights and the right to be secure in one's papers and effects of a truck driver even when he is driving a stolen truck. In Katz, the Supreme Court focussed on an individual's legitimate "expectations of privacy." In order to undermine the defendant driver's

legitimate expectations of privacy -- within the cab of the truck as well as within his own personal effects -- the court must assume preliminarily that the driver knew that the truck had been stolen.

To put the logic more bluntly, the defendant's legitimate expectations of privacy can only be defeated by National's property claims if the court assumes, first, that the truck was stolen, and second, that the defendant knew that the truck was stolen. For the court to conclude that the defendant had no legitimate Fourth Amendment interests or claims with respect to that stolen rental truck requires a prior assumption by the court that the defendant is guilty of precisely the offense with which he is charged. That logic violates the most sacred principle of the constitution that a defendant must be presumed innocent until proven guilty beyond a reasonable doubt.

(b) The warrantless search of the truck was "unreasonable" under the Fourteenth Amendment.

Putting aside for a moment the issue of National's consent, the search was invalid because it had none of those saving traits which the Supreme Court has recognized in the past as transforming a warrantless search into a reasonable one within the meaning of the Fourth Amendment:

-- There were no "exigent circumstances;"

-- The search was not incident to arrest;

-- The search was not an inventory nor an administrative search;

-- The Government had no possessory interest in the vehicle which justified the search.

There is no denying that Fourth Amendment protections afforded motor vehicles have been sharply curtailed. The Supreme Court, however, has not gone so far as to say that all searches of motor vehicles are reasonable simply because they are motor vehicles. When the Government conducts a search without a warrant, there must be some showing that the search was reasonable for other reasons. Otherwise the Fourth Amendment's vital protection of the "right of the people to be secure ... against unreasonable searches and seizures"must prevail.

For Fourth Amendment purposes, motor vehicles are different from residences because automobiles can be easily moved. In Carroll v. United States, 267 U.S. 132 (1925), the Court upheld the warrantless pre-arrest search of a vehicle on the open road-side because, given the mobility of the automobile, it was impracticable for the law enforcement officers to secure a warrant. But the Carroll court also held that "in cases where the securing of a warrant is reasonably practicable, it must be used." 276 U.S. at 156.

Subsequent cases have implied that potential mobility is sufficient to justify a warrantless search. See Husty

v. United States, 282 U.S. 694 (1931); Scher v. United States 305 U.S. 251 (1938). But the doctrine of potential mobility was modified in Coolidge v. New Hampshire, 403 U.S. 443 (1971) where the Court concluded that there had to be some real possibility of the car being moved for the Carroll reasoning to apply.

In Coolidge, the police seized the defendant's unoccupied car from his driveway, took it to the station, and conducted a search under an invalid warrant. The Court declared that since there had been no immediate danger that the car would be moved, a valid warrant was necessary and the search was unconstitutional.

In this case as in Coolidge, there was no real danger, no real possibility that the tractor-trailer would be moved: the defendant had been arrested and was still in jail; the truck was in the custody of its owner, parked in a private lot (not on the street) surrounded by a steel wire fence presumably erected for the sole purpose of deterring theft. There was no danger that the truck would be moved or that its contents would be disturbed.

In Chambers v. Maroney, 399 U.S. 42 (1970) and United States v. Beasley, 476 F.2d 164 (9th Cir. 1973), warrantless searches were upheld because of exigent circumstances; no such similar exigencies are present in this case however.

In Chambers, the police stopped a stationwagon with four men fitting the description of individuals who had just committed a late-night armed robbery of a gas station. The four were arrested and taken, along with their car to the police station. The car remained on the street, potentially mobile. The Court upheld the warrantless, post-arrest search that ensued, basing its opinion specifically on the potential mobility of that automobile. Mr. Justice White wrote for the Court:

> ... the blue stationwagon could have been searched on the spot when it was stopped when there was probable cause to search and it was a fleeting target for a search. The probable cause factor still obtained at the station house and so did the mobility of the car... 399 U.S. at 52.

Chambers expanded on Carroll in one way only: the Chambers search took place after the arrest of the defendants, not before. Chambers teaches us that if probable cause to search existed when the vehicle was originally stopped, it continues to exist after the suspects have been arrested, but that a warrantless search is valid only if the mobility of the car also continues.

With respect to the March 22 search of the Solomon truck, that critical second factor present in both Carroll and Chambers -- mobility or potential mobility -- is absent. Unlike the cars in Carroll and Chambers, the status of the Solomon truck changed significantly. Between the time of Solomon's arrest and the warrantless search, the tractor-

trailer assembly was totally and effectively immobilized.

As with Chambers, the Beasley opinion specifically requires the combination of probable cause and vehicle mobility to validate the warrantless search of an automobile. In Beasley, the Ninth Circuit explicitly found that mobility was still a factor since the defendants had not yet been arrested and the car had not been impounded. "In fact," said the court, "mobility existed to a greater degree than in Chambers where the defendants were under arrest." 476 F.2d at 166.

Nor was the March 22 search of the National truck justified as incidental to a lawful arrest. As the Supreme Court stated in Preston v. United States, 376 U.S. 364 (1964),

> The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of crime -- things which might easily happen where the evidence or weapon is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under an arrest and in custody, then a search made at another place without a warrant is simply not incident to arrest. (Emphasis added) 376 U.S. at 367.

Nor can this search be considered an inventory search. In inventory or administrative search cases, the police justify their intrusion on the basis of a benign intent; they have

engaged in a "search" not to uncover and procure criminal evidence, but to protect the health and safety of the public, Cady v. Dombrowski, 413 U.S. 433 (1973) or to protect the police from danger or from liability for theft. Cabbler v. Commonwealth, 212 Va. 521, 184 S.E. 781 (1971).

In Dombrowski, the police arrested an off-duty policeman for drunken driving after a late-night accident. The police conducted a search of the car to obtain the revolver which the arresting officers had reason to suppose Dombrowski carried. The purpose of the search was to remove the gun from access by the public -- presumably from youths who might break into the car as it sat in the police parking lot. In the process, the police stumbled across blood-stained objects which led to Dombrowski's later conviction for murder. The Dombrowski Court made the need for a warrant turn on the intent of the police in conducting the search. Where the purpose is clearly benign, no warrant should be required.

It is difficult to see how the Government can transform Special Agent Scheiner's rummage through the defendant's belongings in the truck when the truck is in the custody of National Rental Car into a "benign" inventory search. Since the truck was not in the custody of either the Milford Police Department or the federal government, there was no danger to either entity from liability for theft. Since the truck was surrounded by a steel wire fence, there was no reason to believe that the truck or anything in the truck might endanger

the public's health or safety. Nor was any inventory list compiled or provided the defendant after the search had been completed. In truth, there was no "benign" reason for Special Agent Scheiner's presence and participation in that search. Scheiner did not travel from New Haven to Bridgeport as a Special Agent for the Federal Bureau of Investigation for the purpose of conducting an inventory of the property in that truck. Scheiner went to Bridgeport with one purpose in mind -- to search that truck and seize incriminating evidence. He should have obtained a warrant.

Nor can the search be justified on the ground that the Government had a possessory interest in the vehicle. In Cooper v. California, 386 U.S. 58 (1967), the Supreme Court upheld a warrantless automobile search in circumstances that were not exigent and where the police did not have probable casue. That case turned on the fact, however, that the automobile forfeiture provisions in the California Health and Safety Code bestowed a possessory interest on the part of the police sufficient to permit a warrantless search.

> It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it. (Emphasis added) 386 U.S. at 62.

Even the broadest reading of Cooper does not allow warrantless searches where the police do not have a right to deny possession

to the car's owner. Neither the Milford Police Department nor the Federal Bureau of Investigation could claim such a special interest with respect to the National rental truck. Indeed, neither agency did so and neither agency retained the truck in custody for any length of time, returning it to National immediately after the arrest of the defendant. The Cooper case is simply inapplicable.

There is nothing about the circumstances of this search that explains or justifies the Government's failure to obtain a search warrant. The search was unreasonable under the Fourth Amendment, and the evidence should have been suppressed.

(c) The warrantless search of the defendant's brown attache case found in the cab of the National truck was "unreasonable" under the Fourth Amendment.

Even if the FBI's general search of the National truck is valid, the more intrusive inspection by Special Agent Scheiner of the contents of the defendant's brown attache case found within the cab of the truck is not. All of the arguments presented by the defendant with respect to the FBI's general search of the truck apply with far greater force to the warrantless search of the defendant's belongings.

Even if National had standing to consent to the general search of the truck, it had no comparable standing to consent to the FBI's inspection of the defendant's personal effects. Indeed, there is nothing in the record which indicates that

the FBI sought or National supplied the more particularized consent required to open the attache case and rummage through its contents.

None of the reasons traditionally interposed to justify a warrantless search of such property apply to the facts of this situation. Certainly there was no evidence of crime, instrumentalities or contraband in "plain view." Certainly there was no probable cause to believe that the attache case contained any such evidence, instrumentalities or contraband. Certainly there was no reasonable apprehension on the part of the searcher that the search was necessary to guarantee his personal safety. Certainly the search was not conducted incidental to a lawful arrest. Certainly the defendant did not waive his Fourth Amendment rights by consenting to the search of that attache case. Certainly there were no exigent circumstances which justified the FBI's warrantless search of that property: the attache case was not mobile and the defendant was in custody.

Finally, the Government should not be permitted to bolster this search with the logic of Cady v. Dombrowski, supra relating to inventory or administrative searches. This search was no routine inventory of the defendant's belongings; this search was not conducted to protect the health and safety of the public; this search was not motivated by any "benign" intent. The purpose of this search was clear: to uncover and procure evidence to incriminate the defendant. It was precisely

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendix of the defendant-appellant in the above matter was mailed postage pre-paid to William F. Dow, III, Esq., Assistant United States Attorney, New Haven, Connecticut.

Gregory B. Craig

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the kind of general exploratory search, the classic "fishing expedition" which the Fourth Amendment was intended to prevent.

The FBI's warrantless search of the defendant's personal effects was patently unreasonable under the Fourth Amendment, and the evidence taken from that search should have been suppressed.

CONCLUSION

For all of the reasons stated above, the defendant respectfully requests that the defendant's judgment of conviction be reversed and that this Court enter an Order for a new trial in which all of the evidence taken in the course of this unlawful search is suppressed.

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